Vol. 13 JUNE 1906 No. 1

CASE & COMMENT

MONTHLY

ONE YEAR, 50 CENTS ONE NUMBER, 5 CENTS

THE LAWYERS' CO-OPERATIVE PUBLISHING COMPANY

TEXT BOOK BARGAINS

DESIRING to reduce our stock of text-books before semi-annual inventory, we have prepared this carefully selected list of standard works and offer our present stock at the lowest prices ever listed. All are in good sound second-hand condition, and offered subject to sale. Don't delay in ordering.

Abbott, Trial Evidence, 1880,	$1.00
Addison, Contracts, 3 vols., 1888,	3.00
Bailey, Jurisdiction, 2 vols., 1899,	5.00
Bailey, Master's Liability, 1894,	3.25
Bailey, Personal Injuries, 2 vols., 1897,	7.00
Barber, Insurance (Calif.), 1882,	1.50
Barbour, Chancery Practice, 3 vols., 1874,	2.75
Barranger & Adams, Mines & Mining, 1897,	4.25
Baylies, Sureties & Guarantors, 1881,	2.00
Baylies, Trial Practice, 1899,	4.50
Beach, Insurance, 2 vols., 1895,	5.00
Beach, Private Corporations, 2 vols., 1891,	1.50
Beach, Public Corporations, 2 vols. 1893	2.00
Benjamin's Chalmer's Bills & Notes, 1889,	1.50
Benjamin, Sales (Kerr) 2 vols., 1888,	2.00
Bennett, Fire Insurance Cases, 5 vols., (1729–1875)	10.00
Berryman, Insurance Digest, 4 vols., to 1901,	16.00
Same, vols. 3, 4 (1887 to 1901)	10.00
Bigelow, Life & Accident Reports, 5 vols. to 1876,	10.00
Bishop, Contracts, 1887,	3.25
Bishop, Criminal Procedure, 2 vols., 1880,	2.00
Bishop, Marriage & Divorce, 2 vols., 1880,	2.00
Bishop, Married Women, 2 vols., 1871,	3.50
Black, Judgments, 2 vols., 1891,	2.00
Blackburn, Contract of Sales, 1887,	1.00
Boone, Corporations, 1881,	.75
Boone, Mortgages, 1884,	.75
Booth, Street Railways, 1892,	2.75
Bouviers, Institutes, 4 vols., 1851,	3.00
Brandenburg, Digest Bankruptcy (1800 to 1899),	2.00
Broom & Hadley's Commentaries, 2 vols., 1875,	3.50
Browne, Carriers (Wood) 1883,	1.00
Brown, Parol Evidence, 1893,	3.00
Burrill, Law Dictionary, 2 vols., 1859	2.50
Burroughs, Public Securities, 1881,	1.00
Byles, Bills & Notes (Wood), 1891,	2.75
Challis, Real Property, 1887,	.75
Cook, Stock & Stockholders, 2 vols., 1894,	2.00
Cooke, Life Insurance, 1891,	2.25
Croswell, Electricity, 1895,	3.50
Croswell, Executors & Adm., 1889,	1.75
Daniel, Negotiable Instruments, 2 vols., 1891,	3.00
DeColyar, Guaranty &c 1875,	.75
Deering, Negligence, 1886,	.75
Desty, Taxation, 2 vols., 1884,	2.50
Devlin, Deeds, 2 vols., 1887,	3.00
Dresser's Employer's Liability, 1902	2.75
Dwarris, Statutes, (Potter) 1871,	1.75
Eastman, Bankruptcy, 1903,	3.00
Eaton & Gilbert, Commercial Paper, 1903,	3.50
Eden, Injunctions (Waterman) 2 vols., 1852,	2.00
Edwards, Bills & Notes, 2 vols., 1882,	2.00
Elphinstone, Deeds, 1889,	1.25
Estabrook, Cities (Wisconsin), 1900,	1.25
Fetter, Equity, 1895,	2.25
Field, Ultra Vires, 1881,	1.00
Freeman, Executors, 2 vols., 1888,	2.25
Green, Criminal Law Reports, 2 vols., 1874,	2.50
Greenleaf's Cruise, Real Property, 3 vols., 1849,	2.25
Hare, Contracts, 1887,	1.75
Harris, Criminal Law, 1885,	1.75
Harris, Identification, 1892,	2.50
Helliwell, Stock & Stockholders, 1903	4.50
Henderson, Chancery Practice, 1904,	4.50
High, Extraordinary Legal Remedies, 1896,	3.50
Howe, Studies in Civil Law, 1896,	1.25
Huffcutt & Woodruff, Contracts, 1894,	1.00
Jones, Liens, 2 vols., 1888,	3.50
Jones, Mortgages, 2 vols., 1894,	3.75
Judson, Interstate Commerce, 1905,	4.25
Kelly, Contracts by Married Women, 1882,	1.25
Kerr, Injunctions, 1889	1.25
Kerr, Insurance, 1902,	3.50
Kerr, Real Property, 3 vols., 1895,	9.00
Kleber, Void Judicial Sales, 1899,	3.50

TERMS: Prices include delivery; 10 per cent. discount on orders amounting to $25.00 or over, and we pay delivery charges if draft is sent with order.

LAWYERS CO-OPERATIVE PUBLISHING CO.

ROCHESTER, N. Y.

Case and Comment

NOTES OF

RECENT IMPORTANT, INTERESTING DECISIONS

INDEX TO ANNOTATION OF THE LAWYERS REPORTS ANNOTATED

LEGAL NEWS NOTES AND FACETIÆ

VOL. 13. JUNE, 1906. No. 1

CASE AND COMMENT

Monthly. Subscription, 50 cents per annum postpaid. Single numbers, 5 cents.

THE LAWYERS' CO-OPERATIVE PUB. CO.,
Rochester, N. Y.

NEW YORK, 81 Nassau St. CHICAGO, 225 Dearborn St.

Vacating Fraudulent Naturalization.

Since commenting on this question in the December issue, our attention has been called to a decision of the United States circuit court of appeals in United States v. Gleeson, 33 C. C. A. 272, 62 U. S. App. 311, 90 Fed. 778, in which the court affirmed a decision of the circuit court sustaining a demurrer in a suit brought by the government to procure a decree vacating a certificate of naturalization on the ground that the certificate was procured through false and fraudulent representations, statements, or declarations. The opinion of the circuit court of appeals, however, makes no reference to the subject of naturalization, but disposes of the case on the general doctrine that a judgment will not be set aside, vacated, or annulled on the sole ground that it was obtained by the false testimony of the successful party. Nothing was said with respect to any distinction between a certificate of naturalization and an ordinary judgment. In the circuit court, however (78 Fed. 397), the court referred to the decision in United States v. Norsch, 42 Fed. 417, in which it says the liability of a judgment of naturalization to be set aside for fraud, like a patent, was treated as conceded, and only the power of the Federal court to set aside such judgments of state courts was considered, with an intimation that the relief would be accomplished by setting aside the certificate, or by injunction against exercising the right. To this, however, the circuit court, in the Gleeson Case, says: "The surrender of the certificate, which is only evidence of the judgment, would not affect the citizenship established by the judgment; and an injunction which could only run against further exercise of the rights of citizenship would not affect past acts." Its decision, therefore, was that the naturalization, though fraudulently procured, was conclusive; and this decision was affirmed by the circuit court of appeals.

Savagery Triumphant.

Press reports announce that a grand-jury investigation of the mob of April 14, at Springfield, Missouri, which hanged and burned some negroes, has found that the alleged assault by the negroes on the woman who complained of them was not committed, that the negroes charged with the crime could not possibly have been at the place of the alleged assault at the time, and that the sheriff and police department

were negligent in the performance of their duty. Lapses into the savagery of mob lynchings, with their burning of human victims, have pilloried this nation, bearing its brand of indelible disgrace, before all the civilized nations of the earth. A lessening of these unspeakable horrors is shown by recent statistics, but one in Ohio and another in Missouri have again illustrated the latent savagery that exists in the worst stratum of every populous community, though ordinarily restrained by the forces of law and order. Well-intentioned defenders of lynchings are beginning to learn that savagery and brutality cannot be extinguished by turning the whole community into brutes and savages, and that a respect for law and order is not created by turning the whole community into a lawless mob.

Hanging and burning men on general principles, without trial and on mere suspicion, do not tend to inspire respect for justice, or to build up a law-abiding community. If the press reports are correct, the mob at Springfield burned innocent men. In every such case the legal presumption of the innocence of the victim is offset only by the presumption of fairness and justice on the part of a frenzied mob. Fortunately there are indications that the best men of every community are beginning to set themselves firmly against these exhibitions of savagery, which disgrace not only the mob, but the community and the nation itself.

Enforcement in Equity of Illegal Contract.

A striking illustration of the power of a court of equity to modify a clearly established rule is furnished by a recent decision of the supreme court of Washington in the case of a contract which was contrary to public policy because designed to create a monopoly. Ordinarily, by the clearest of rules, such contracts are denied enforcement by the courts, but in this Washington case, notwithstanding such an illegal feature of a contract to furnish a supply of electricity to a street car and electric lighting company, in the city of Seattle, the court decided that, because the public interests were involved, it would enforce the contract temporarily, and would not allow the defendant arbitrarily and without warning to cut off the supply of electricity from the street cars and lighting systems of the city. It is therefore the somewhat strange case of a court of equity giving affirmative relief by means of an injunction, to one party to a contract which is against public policy, against the attempt of the other party to refuse performance. This, in effect, amounted to granting the specific performance of the contract for a limited time. In one way of stating the case, the court refused to follow the general doctrine which denies affirmative relief to either of the parties who are *in pari delicto* in an illegal contract. But in reality it is not out of harmony with the general doctrine. The refusal of the courts to enforce such contracts is based on the ground of public policy. That is, it is adopted in the interest of the public welfare. It is not at all because of any consideration of interest of either of the parties to the contract. It simply leaves them where it finds them, no matter what the plight of either may be. The refusal to enforce the contract is not for the protection of the defendant, but for the protection of the public, by discountenancing such contracts. In the present case, which is that of Seattle Electric Co. *v.* Snoqualmie Falls Power Co.(Wash.) 1 L. R. A. (N. S.) 1032, 82 Pac. 713, the court grants an injunction which is in the nature of compelling specific performance of the contract for such time as will enable an adequate supply of electricity to be procured from other sources so as to save the public from great inconvenience. This is only a recognition of a greater public interest in such limited enforcement of the contract than there could be in refusing it. The ordinary rule of public policy gives way, in the exceptional case, to an extraordinary public interest in the other direction, so that the principle on which the court ordinarily denies affirmative relief on the contract because it would be against the public interest, operates in the present case much more strongly to require that such relief be granted. While the case is exceptional in its application of the principle, there are other cases which lend it support. In Conger *v.* New York, W. S. & B. R. Co. 120

N. Y. 29, 23 N. E. 983, a specific performance of the contract was denied because its performance would prejudice the public interest. And in the case of Curran v. Holyoke Water Power Co. 116 Mass. 90, it was held that, in determining the question of specific performance of a contract, the rights of third persons were to be taken into consideration. The present case, however, makes an especially clear application of the principle that the interests of the public will determine the question of affirmative relief on a contract against public policy. The court says: "It would have been greater wrong than any to which the appellants confessed, to have permitted them arbitrarily and without warning to stop from operation the street-car and lighting systems of the city."

A Law to Protect Birds.

The threatened extermination of all beautiful birds in this country in order to satisfy the demands for ornamental millinery has led to the enactment in several states of greatly needed laws for the protection of wild birds. Commissioner Whipple, of the New York State Forest, Fish, and Game Department, has recently served notice through the press to the milliners of the state, retail and wholesale, that his department intends to use every legitimate means to enforce the law prohibiting the possession or sale of the bodies or feathers of wild birds, whether taken in this state or elsewhere. The penalty for each violation of the law is $60 fine, and an additional $25 for each bird, or part thereof, sold, offered for sale, or possessed. This law seems to be sweeping enough to constitute an efficacious remedy so far as the state of New York is concerned. All the added beauty that can be given to the creations of milliners for the adornment of ladies is not enough to compensate a civilized people for the infinite loss to the every-day life of many millions of people, if the beautiful plumage and graceful flight of the birds should disappear, and their twitter and song be silenced. States which have no such laws may well adopt them, and all that have them should secure their enforcement.

Federal Protection of Niagara.

Alarm because of the danger that the most far-famed, if not the most awe-inspiring and sublime, spectacle of nature in the eastern part of the New World may be ruined by the diversion of the Niagara river for commercial purposes, has at last somewhat aroused the public. The legislature of New York has dealt kindly with the corporations that wish the use of the water, and the Canadian authorities have made similar grants. The present legislature of New York has shown more appreciation of the interests of the public, and possibly might not go further in authorizing the diversion of the river; but there are sufficient reasons why the Federal government should take action, even if the state government could be trusted to do better in future than it has done heretofore in protecting the Falls. In the first place, international action must be taken to make any restriction effective. If Canada refuses to permit the water on that side of the river to be diverted, while our government allows it to be done on this side, all the advantage of the great water power would be reaped by the United States at Canada's expense, and the opposite would be the case if water was not allowed to be taken from the river on this side, and it was all diverted on the other side.

Just as the people of the United States are beginning to realize the importance and wisdom of enriching the nation, states, and municipalities with such treasures as noble monuments, statues of great men, stately and beautiful public buildings, as well as costly and exquisite public parks, the destruction, for purely mercenary reasons, of one of the great natural wonders of the world, would be a crime unspeakable. The palisades of the Hudson, the grand canyon of the Colorado, Yellowstone park, Yosemite valley, the California groves of giant redwoods, and the Falls of Niagara are treasures of the American people which they cannot allow to be destroyed without everlasting disgrace.

The power of the Federal government to control the diversion of the Niagara river may not be entirely free from doubt. It has been assumed quite generally that this matter was under the sole control of the state of New York. Of course the power

of the Federal government to regulate commerce is fully understood to include the control over navigable waters, and it therefore extends to the protection of Niagara river against such diversion of water as would affect its navigability. But taking water from above the Falls at a point where vessels cannot go does not seem to come within the range of the Federal power over navigable waters. The real basis of Federal power to protect the Falls against diversion of the water seems to be the international character of the river. As a boundary between the nations, this river is a natural feature, in the continued existence of which each nation has an undoubted right. Any attempt of either nation to divert the waters of Lake Erie through some other channel than that of the Niagara river would unquestionably wrong the other nation, and would be, under international law, a just cause of war. It is not easy to see why the same is not true of any attempt of either nation to drain the waters of the river into channels, ditches, or tunnels of any kind by which the natural course and condition of the river is materially changed. The sublime Cataract is a part of this international river, and it is equally a treasure of each nation, the preservation of which each is justly entitled to demand. If it is true that each nation is entitled to demand the continued existence of the Cataract, or of the river, it is obvious that it is the business of the Federal government to prevent any such action in this country as will constitute an international offense. If Great Britain has a right to demand the enforcement of the ancient maxim that the water shall flow as it has been accustomed to flow, it is the Federal government, and not the state of New York, that must answer the demand. The power to protect the river belongs with the responsibility for its protection. Those who wish to divert the water for their own advantage may not readily accept this reasoning. But they would probably see the question in a different light if the Canadians alone were proceeding to drain the river, and were getting all the benefits. Their indignation would go beyond all bounds over what they would then think a great international wrong. It now seems likely that the joint action of the two governments will be taken in time to save to the world this great natural wonder, which ought to be allowed to stand forever. Other works of nature may be as marvelous. Few, if any, so impress the imagination of man with the sense of sublimity.

Surface Support by Coal.

A decision that has something of the effect of an explosion on the law of coal mines is that of Griffin *v.* Fairmont Coal Co. (W. Va.) 53 S. E. 24. Of the opinion of the court a dissenting judge says it "avowedly disapproves and repudiates vital principles of the law of subjacent and lateral support, declared by every American court that has ever applied that law to a deed or contract by which the surface of land has been separated in title from the underlying coal, as well as the decisions of the English courts. It expressly condemns, by name, the decisions of Alabama, Illinois, Indiana, Iowa, New York, and Pennsylvania, and those of Ohio, and perhaps other states, without express reference to them. It demolishes at one fell blow the entire system of English and American law on the subject. This the opinion fully and expressly concedes."

It has generally been held in England and the United States that a grant of coal by one who retains title to the surface of the land does not give the owner of the coal the right to remove it in such a way as to destroy the support of the surface. This West Virginia case adopts the following rule as stated by the court itself in its syllabus: "Where a deed conveys the coal under a tract of land, together with the right to enter upon and under said land, and to mine, excavate, and remove all of it, there is no implied reservation in such an instrument that the grantee must leave enough coal to support the surface in its original position." The extent to which the contrary doctrine has been carried is stated in Noonan *v.* Pardee, 200 Pa. 474, 55 L. R. A. 410, 86 Am. St. Rep. 722, 50 Atl. 255, as follows: "What the surface owner has a right to demand is sufficient support, even if to that end it be necessary to leave every pound of coal untouched under his land."

The West Virginia decision is based on the language by which the grantor con-

veyed mining rights and privileges for the removal of the coal, with the right "to mine, excavate, and remove all of said coal." This language the majority of the court holds to be free from ambiguity, and sufficient to exclude any implied reservation of the right of support to the surface. There are two opinions representing the majority of the court, and two opinions by the dissenting judge, one of them very extended. The whole report covers more than 50 pages of the Southeastern Reporter, which amounts to a good deal more than 100 pages of the official reports. The dissenting judge contends that in a deed of coal underlying the surface of land the right of support to the surface is not relinquished without express language to that effect, and that a mere grant of a right to remove all the coal, without an express release of liability for consequent damages resulting from subsidence, or a provision for compensation for such damages, is not sufficient. The difference between the points of view of the minority and the majority judges relates chiefly to the question whether the express grant of the right to "remove all of said coal" is so unambiguous and explicit that it cannot be affected by any rules of interpretation. The report of the case is so voluminous that scant justice can be done to the arguments on the question by a brief summary like this. It is clear, however, that the decision makes a notable departure from the general current of the English and American cases on the question.

The Case of George W. Perkins.

The widely discussed prosecution of George W. Perkins for grand larceny in the use of insurance funds for political campaign purposes has just been held by the appellate division of the supreme court to show no criminal intent. District Attorney Jerome, having first announced this view, was afterwards constrained to institute a prosecution in order to have the matter judicially determined. The justices of the appellate division agree that there was no criminal intent in the use of the funds. From a newspaper report of the case, which has not yet appeared in the regular reports, it appears that the campaign contribution on behalf of the insurance company was first made by Mr. Perkins out of his own funds at the request of the president of the insurance company, with an express agreement to repay him. Afterwards he was reimbursed by the insurance company with the knowledge of the finance committee. The money was not stealthily taken, nor was there anything secretive about it. It was taken by Mr. Perkins, as the court finds, in the belief that he had a right to take it in satisfaction of his claim. The opinion of Mr. Justice McLaughlin says the relator did not commit larceny at common law, nor obtain possession of the money by false pretenses, and that the case is devoid of every element from which it could be claimed that possession was obtained by false representation. As to the suggestion that the money was received in trust, and thereafter converted to his own use, the opinion says: "It was not received in trust; on the contrary, it was received to satisfy the relator's claim."

Upon the question of the function of the jury to pass on the intent, the opinion says that while, as a general proposition, the intent is for the jury, "if in connection with the act which is alleged to be criminal there are other facts and circumstances which negative the existence of a criminal intent, or are consistent with innocence, then a conviction cannot be had; and it is the duty of the court to so hold as a matter of law."

There may be a distinction between the case of Mr. Perkins, who did not, in the strict sense, appropriate insurance moneys for political purposes, but contributed his own funds at the request of the president of the company, and afterwards took his pay for what was, in substance, a loan of his money to the company, and the case of an official who made a direct contribution from funds of his company to a political campaign committee; but, if both believed the transaction lawful, there would seem to be a lack of criminal intent in both cases.

The liability of Mr. Perkins to a private action for the recovery of the funds paid him by the insurance company is not settled by the above decision. The court takes pains to point out that what it says is not intended to apply to such a case.

The court of appeals will probably have to pass upon this decision: but it does not seem very likely that it will be reversed.

Index to New Notes

IN

LAWYERS REPORTS ANNOTATED

1 L. R. A. (N. S.) pages 618-1203.

Contempt.

Power of magistrate to punish witness for contempt:—(I.) In general: (a) source of the power; (b) power inferred from other legislation; (c) specific statutory authority: (1) in general; (2) miscellaneous instances not within scope of statutes; (3) defective proceedings; (4) necessity of pendency of action: (d) contempt of witness in justice's court punishable by higher court; (II.) want of jurisdiction; (III.) depositions to be used in another state; (IV.) review of commitment by habeas corpus; (V.) collateral attack of commitment proceedings 1135

Custody of Law.

Right to sell property while in custody of law:—(I.) Introduction; (II.) title of property in custody of law: (a) *obiter dicta* opinions in respect to; (b) effect of custody upon right to alienate personal property; (c) effect as to real estate 1055

Fraud.

Recovery of nonexempt property conveyed to avoid nonexistent or unfounded demand:—(I.) Scope; (II.) effect of the intent to avoid liability; (III.) when conveyance was wrongfully induced by grantee: (a) in general; (b) imposition or overreaching; (c) false representations: (1) in general; (2) by one in confidential relations 1007

Insurance.

Effect of voluntary exposure to peril upon liability on marine insurance policy:—(I.) Scope; (II.) omission to employ pilot; (III.) voluntary stranding; (IV.) running into danger of capture; (V.) when peril incurred is prohibited by statute; (VI.) when peril is incurred in obeying governmental command; (VII.) when peril incurred was not proximate cause; (VIII.) barratrous conduct; (IX.) miscellaneous cases 1095

Landlord and Tenant.

Effect of renewing tenancy without reserving right to remove fixtures:—(I.) Introduction; (II.) new lease as implied surrender of rights under old tenancy: (a) the prevailing rule; (b) the contrary doctrine; (III.) effect of special covenants in new lease; (IV.) construction of leases and agreements, intention of parties; (V.) renewal or extension of old term 1192

Limitation of Actions.

When does the statute of limitations begin to run against the unpaid balance of a stock subscription:—(I.) Introduction (II.) actions by solvent corporations: (a) from a fixed period; (b) from demand; (c) after sale of forfeited stock; (d) when statute not applicable; (III.) actions after insolvency of the corporation: (a) by assignee or trustee for the benefit of creditors, or by receiver: (1) after demand; (2) from insolvency; (3) when statute not applicable; (b) by assignee or trustee in bankruptcy; (c) by creditors of the corporation: (1) after demand; (2) from fixed period; (3) from insolvency; (d) actions against representatives of deceased stockholder; (IV.) statutory liability for unpaid balance; (V.) actions on premium or "stock" notes of mutual insurance company; (VI.) when should demand be made, in cases where a demand is necessary; (VII.) miscellaneous 901

Master and Servant.

Duty of master to inspect tools or implements furnished servant:— (I.) Scope; (II.) duty of master to inspect: (a) in general; (b) when defect is obvious to employee; (c) ordinary tools in every-day use; (d) when duty of inspection rests on employee; (e) when tool is property of fellow workman; (III.) right of employee to assume that tools are safe; (IV.) right to complain of failure to inspect when safe tools are available 944

Parent and Child.

Recovery by parent for death of child, where parent has abandoned the child 1161

Trademarks.

Sale of a trademark:—(I.) Introduction; (II.) ownership; (III.) transferability: (a) generally; (b) sales in gross; (c) of marks denoting place or product of manufacture; (d) of marks denoting personal skill; (e) of names as trademarks; (f) under special statutes; (IV.) method of transfer: (a) by sale of business or article with which mark is used; (b) judicial sales; (V.) rights resulting from, or affected by, transfer: (a) of vendor; (b) of vendee: (1) exclusive; (2) injunction; (3) purchase of stock containing trademark; (c) of partners; (d) as affected by

fraud: (1) generally; (2) notice of change of ownership; (3) immaterial inaccuracies; (VI.) fraudulent sales; (VII.) proof of sale 704

Among the New Decisions.

Action. A suit against a state officer to cancel a tax title is held in Sanders *v.* Saxton (N. Y.) 1 L. R. A. (N. S.) 727, to be within the rule that a state cannot be sued.

A consumer's right to maintain a suit to compel a water company to furnish water at rates stipulated in a contract with a municipality is upheld in Pond *v.* New Rochelle Water Co. (N. Y.) 1 L. R. A. (N. S.) 958.

Adverse possession. Inclosure of a right of way is held in Pritchard *v.* Lewis (Wis.) 1 L. R. A. (N. S.) 565, not to be sufficient possession to ripen into an adverse title.

A grantee from a mortgagor, who takes possession of a strip beyond the true boundary line, is held in Thornely *v.* Andrews (Wash.) 1 L. R. A. (N. S.) 1036, not to be in adverse possession as against the mortgagee until the mortgage becomes due.

Appeal. The failure of the court, in a criminal case, to interpose objections to improper questions made by a juryman is held, in State *v.* Crawford (Minn.) 1 L. R. A. (N. S.) 839, not necessarily to be reversible error in the absence of objection or exception by counsel.

An exception to the general rule that an appeal does not lie from a decree for costs is applied in Nutter *v.* Brown (W. Va.) 1 L. R. A. (N. S.) 1083, in case of a decree for costs not in the discretion of the court.

Arbitration. Fraud or mistake on the part of an umpire, so great and palpable as to imply bad faith, or his failure fairly and honestly to perform the function assigned to him, is held, in Edwards v. Hartshorn (Kan.) 1 L. R. A. (N. S.) 1050, to invalidate his decision.

Bail. The authority of a clerk of a district court to take a bail bond was denied in Territory *ex rel.* Thacker *v.* Woodring (Okla.) 1 L. R. A. (N. S.) 848.

Banks. The right of a bank to apply to the personal obligations of a commission merchant money received for produce sent him for sale and deposited by him in his general account in the bank is denied in Boyle *v.* Northwestern Nat. Bank (Wis.) 1 L. R. A. (N. S.) 1110.

Bills and notes. One whose indorsement was secured upon a note by the trick of inducing him to sign his name to a paper placed upon the note in such a way that the ink penetrated through to the note is held, in Yakima Valley Bank *v.* McAllister (Wash.) 1 L. R. A. (N. S.) 1075, not to be liable.

The rule making certainty as to payment a condition of negotiability was applied in Joseph *v.* Catron (N. M.) 1 L. R. A. (N. S.) 1120, by denying the negotiability of a note payable upon the confirmation by Congress of a certain land grant.

Bill of review. A supplemental bill in the nature of a bill of review is held, in Hardwick *v.* American Can Co. (Tenn.) 1 L. R. A. (N. S.) 1029, to be a proper proceeding to bring before the court new matter discovered by defendant while the decree is in process of execution.

Carriers. Injuries caused by gross negligence are held, in Chicago, R. I. & P. R. Co *v.* Hamler (Ill.) 1 L. R. A. (N. S.) 674, to be included in a release, by a sleeping car porter, of the railroad company from liability for negligent injury.

What is a reasonable time to keep a station platform lighted prior to the arrival of a train is held, in Abbot *v.* Oregon R. & N. Co. (Or.) 1 L. R. A. (N. S.) 851, to present a question for the jury.

The approval by the state commission of a freight rate based upon limited valuation of the property is held, in Everett *v.* Norfolk & S. R. Co. (N. C.) 1 L. R. A. (N. S.) 985, not to absolve the carrier from liability for full value of the property if lost through its negligence.

A railroad company is held, in Rodgers *v.* Choctaw, O. & G. R. Co. (Ark.) 1 L. R. A. (N. S.) 1145, to be liable to a passenger thrown to the ground by the starting of a freight train with a jerk while he was on the platform, to which, with the knowledge of the conductor, he had gone for a necessary purpose, the conductor having neither warned him of the danger, nor taken any measures to prevent the starting of the train.

Constitutional law. The constitutionality of a statute providing for the imprison-

ment of one acquitted of the charge of murder on the ground of insanity is upheld in *Ex parte* Brown (Wash.) 1 L. R. A. (N. S.) 540.

Contempt. The jurisdiction of a committing magistrate to punish for contempt a witness who refused to obey a *subpœna duces tecum* is denied in Farnham *v.* Colman (S. D.) 1 L. R. A. (N. S.) 1135.

Contracts. Recovery for threshing grain was denied in Johnson *v.* Berry (S. D.) 1 L. R. A. (N. S.) 1159, for failure to file the bond required by the South Dakota statute, making it unlawful to use a threshing machine without executing and filing a bond.

Corporations. The constitutionality of a statute requiring foreign corporations doing business within the state, and nonresident domestic corporations, to appoint the auditor as attorney to accept service of process and notice, is upheld in State *v.* St. Mary's Franco-American Petroleum Co. (W. Va.) 1 L. R. A. (N. S.) 558.

The right to take, by eminent domain, the stock of dissenting stockholders in a railroad company for the purpose of effecting a consolidation of the road with others to create a through line, is upheld in Spencer *v.* Seaboard Air Line R. Co. (N. C.) 1 L. R. A. (N. S.) 604.

The right of a state to revoke the license of a foreign insurance company for refusal to perform its agreement not to remove suits against it to the Federal courts is upheld in Prewitt *v.* Security Mut. L. Ins. Co. (Ky.) 1 L. R. A. (N. S.) 1019.

A contract made with a foreign corporation before it has obtained permission to do business in a state is held, in State *v.* American Book Co. (Kan.) 1 L. R. A. (N. S.) 1041, not to be, for that reason, invalid, or subject to cancelation at suit of one of the contracting parties.

An unconstitutional impairment of contract is held, in Myers *v.* Knickerbocker Trust Co. (C. C. A. 3d C.) 1 L. R. A. (N. S.) 1171, to be effected by a change of the law permitting individual creditors of a corporation to enforce their claims against individual stockholders, so as to provide one suit in equity in behalf of all creditors, to which all stockholders may become parties, and abating suits pending under the former law.

Criminal law. The authority conferred on a board of commissioners to fix the credits to be allowed to convicts for good behavior is held, in Fite *v.* State *ex rel.* Snider (Tenn.) 1 L. R. A. (N. S.) 520, to be an unconstitutional delegation of legislative power.

Death. An action for the death of a minor child is held, in Swift & Co. *v.* Johnson (C. C. A. 8th C.) 1 L. R. A. (N. S.) 1161, to be for the sole benefit of the father, although he has deserted the family, to whose support the deceased was, at the time of his death, contributing.

Deeds. Property conveyed to a railroad company for a right of way, by a general warranty deed, is held, in Abercrombie *v.* Simmons (Kan.) 1 L. R. A. (N. S.) 806, to revert to the adjoining owner upon the abandonment of its use for that purpose.

Drains and sewers. The rule exempting municipalities from liability for consequential damages from its sewerage system is held, in Hart *v.* Neillsville (Wis.) 1 L. R. A. (N. S.) 952, not to apply where the system was not constructed according to any regularly and properly adopted plan.

Duress. Refusal to pay money admitted to be due, except upon receiving a certain kind of receipt, is held, in Earle *v.* Berry (R. I.) 1 L. R. A. (N. S.) 867, not to constitute such duress as to render the receipt void.

Electric wires. The violation of a municipal ordinance as to the manner of stringing the electric-light wire which charged a broken telephone wire, or the imperfect insulation of the wire, is held, in Stark *v.* Muskegon Traction & L. Co. (Mich.) 1 L. R. A. (N. S.) 822, not to be the proximate cause of an injury to a boy who seized the broken telephone wire to receive a shock.

Eminent domain. Power to confer the right of eminent domain to secure a right of way for a private railway is denied in Cozad *v.* Kanawha Hardwood Co. (N. C.) 1 L. R. A. (N. S.) 969.

The construction of mining roads and tramways is held, in Highland Boy Gold Min. Co. *v.* Strickley (Utah) 1 L. R. A. (N. S.) 976, to be a public use, for which the power of eminent domain may be exercised.

Equity. The power of a court of equity to prevent majority stockholders from exercising their statutory power to reduce the capital stock in order to relieve defaulting stockholders from meeting their

obligations is asserted in Theis *v.* Durr (Wis.) 1 L. R. A. (N. S.) 571.

An exception to the rule that equity will not specifically enforce, as between parties *in pari delicto*, a contract which is opposed to public policy, is applied in Seattle Electric Co. *v.* Snoqualmie Falls P. Co. (Wash.) 1 L. R. A. (N. S.) 1032, by restraining the breach of a contract to furnish a supply of electricity to a street car and electric lighting company upon the ground that such breach would result in a great public inconvenience.

Evidence. A waiver with respect to confidential disclosures made to a physician by insured concerning his last sickness is held, in Western Travelers' Acci. Asso. *v.* Munson (Neb.) 1 L. R. A. (N. S.) 1068, to have been effected by a stipulation in a contract of life insurance to the effect that proofs of death shall consist in part of the affidavit of the attending physician, which shall state the cause of his death, and such other information as may be required by the insurer.

Evidence of earnings of persons proficient in trade is held, in Central Foundry Co. *v.* Bennett (Ala.) 1 L. R. A. (N. S.) 1150, not admissible upon the question of damages for negligently killing an apprentice.

Executors and administrators. A right of action for negligently killing a person is held, in Jordan *v.* Chicago & N. W. R. Co. (Wis.) 1 L. R. A. (N. S.) 885, to be an asset of his estate sufficient to warrant appointment of an administrator.

A woman taking her brother into her home, and, without benefit to herself, nursing and performing other menial services for him during his last illness, is held, in Mark *v.* Boardman (Ky.) 1 L. R. A. (N. S.) 819, to be entitled to an allowance of their value out of his estate, although there was no express contract that payment should be made.

Fires. A railroad company is held, in Cincinnati, N. O. & T. P. R. Co. *v.* South Fork Coal Co. (C. C. A. 6th C.) 1 L. R. A. (N. S.) 533, to be liable for setting fire to lumber stacked with its consent on its right of way at the place usually occupied by lumber awaiting transportation, although the lumber in question had not been delivered to it for that purpose.

The owner of a threshing-machine engine is held, in Martin *v.* McCrary (Tenn.) 1 L. R. A. (N. S.) 530, not to have fulfilled his duty to guard against fires by merely adopting a spark arrester in general use, where he had been in the habit of using an additional spark arrester which he had allowed to become out of order at the time the fire occurred.

Fire escapes. The effect of an official certificate of approval of fire escapes is held, in Bonbright *v.* Schoettler (C. C. A. 3d C.) 1 L. R. A. (N. S.) 1091, to be conclusive in favor of the property owner, as against civil liability to a person injured on account of alleged defects in them.

Forgery. Uttering a letter with a forged signature for the purpose of falsely representing the bearer to be a friend of the writer, and giving him standing with persons to whom it may be presented, is held in People *v.* Abeel (N. Y.) 1 L. R. A. (N. S.) 730, to be forgery under the New York statute.

Fraud. The right to cancel a voluntary conveyance of real estate, made to place it beyond the reach of a judgment in an anticipated action, is denied in Carson *v.* Beliles (Ky.) 1 L. R. A. (N. S.) 1007, as against the heirs of the grantee, although the threatened action had no foundation in law, and the grantee, upon being notified of the conveyance, promised to reconvey on demand.

Gifts. A gift *inter vivos* is held, in Harris Banking Co. *v.* Miller (Mo.) 1 L. R. A. (N. S.) 790, not to be established by depositing a fund in a bank with the statement that it was intended for the donee, and the delivery to the latter of a certificate of deposit with an indorsement indicating that it was his.

Homicide. Mere violation of a statute making it a misdemeanor to hunt on another's property without a permit is held, in State *v.* Horton (N. C.) 1 L. R. A. (N. S.) 991, not to be such an unlawful act as to render an accidental homicide committed while so doing a criminal offense.

Illegitimacy. That illegitimate children were the result of adulterous intercourse is held, in Miller *v.* Pennington (Ill.) 1 L. R. A. (N. S.) 773, not to prevent the subsequent intermarriage of their parents, and their acknowledgment by their father, from effecting their legitimation under the Illinois statute.

Indictment and information. The power of the legislature to authorize the institution of prosecutions for common-law felonies

by information without indictment is upheld in State v. Stimpson (Vt.) 1 L. R. A. N. S.) 1153.

Infants. A stipulation that a suit for breach of a contract to transmit a telegram must be brought within sixty days is held, in Western U. Teleg. Co. v. Greer (Tenn.) 1 L. R. A. (N. S.) 525, to be binding on a minor.

Injunction. The jurisdiction of civil courts over injunction proceedings instituted to protect personal rights is declared in Itzkovitch v. Whitaker (La.) 1 L. R. A. (N. S.) 1147.

Insurance. The right of the holder of an assessment policy from a company having the right to issue policies on both the assessment and the reserve plans, to require the company to continue the issuance of assessment policies, is denied in Green v. Hartford L. Ins. Co.(N. C.) 1 L. R. A. (N. S.) 623.

The adoption of a by-law by a fraternal insurance order, excluding from membership persons engaged in the sale of intoxicating liquors, is held, in Grand Lodge A. O. U. W. v. Haddock (Kan.) 1 L. R. A. (N. S.) 1064, not to avoid the certificate of a member already engaged in that business, and who continued therein after the adoption of the by-law.

A marine underwriter is held, in Standard Marine Ins. Co. v. Nome Beach L. & T. Co. (C. C. A. 9th C.) 1 L. R. A. (N. S.) 1095, not to be liable for a loss occurring through the deliberate act of the master in pushing through dangerous ice for the purpose of reaching his destination quickly.

Intoxicating liquor. The constitutionality of a statute making the possession of liquor prima facie evidence of intent to violate the statute against illegal sales is upheld in State v. Barrett (N. C.) 1 L. R. A. (N. S.) 626.

The power of a state to require the keeper of a bar on a ferryboat making regular trips from another state, where it is owned, to pay a license tax for the privilege of selling liquors while the boat is in the former state, is upheld in Harrell v. Speed (Tenn.) 1 L. R. A. (N. S.) 639.

Judgment. A decree of divorce is held, in Nolan v. Dwyer (Wash.) 1 L. R. A. (N. S.) 551, not to be subject to be vacated after the death of one of the parties.

A decree of divorce rendered against a nonresident on service by publication is held, in Forrest v. Fey (Ill.) 1 L. R. A. (N. S.) 740, to be void and subject to collateral attack, where the record 'failed' to show that there was an affidavit of nonresidence, as required by statute.

Landlord and tenant. One who took possession of premises under an arrangement with the grantor, and subsequently agreed to pay rent to the grantee for a certain period, is held, in Hodges v. Waters (Ga.) 1 L. R. A. (N. S.) 1181, not to be estopped to deny liability to the latter for rent after the expiration of the term of such agreement although he remained in possession of the premises.

The right of a tenant to remove trade fixtures placed on the premises is held, in Wadman v. Burke (Cal.) 1 L. R. A. (N. S.) 1192, to be lost by entering into a new lease containing no recognition of his title to the fixtures, and binding him to surrender the premises in as good state and condition as reasonable use and wear would permit.

Larceny. One who induced another to part with money as a wager on a pretended event which was not to take place, with the intention of appropriating it to his own use, is held, in State v. Ryan (Or.) 1 L. R. A. (N. S.) 862, to be guilty of larceny in making such appropriation.

Levy and seizure. The right to have personal property exempted from forced sale is held, in Brown v. Beckwith (W. Va.) 1 L. R. A. (N. S.) 778, not to be forfeited on the ground of nonresidence until removal has commenced, although the intention to leave the state permanently has been formed, and the property delivered for shipment to a point outside the state.

Limitation of actions. The statute of limitations is held, in Cook v. Carpenter (Pa.) 1 L. R. A. (N. S.) 900, not to begin to run against an unpaid subscription until demand is made for payment, where, by the terms of the contract, it is not payable until called for.

A legacy reciting that it was in consideration of the legatee's care for the testator's invalid mother is held, in McNeal v. Pierce (Ohio) 1 L. R. A. (N. S.) 1117, not to be an acknowledgment of a legal obligation which would remove the bar of the statute of limitations.

A holder of a demand certificate of deposit issued by a bank is held, in Elliott v.

Capital City State Bank (Iowa) 1 L. R. A. (N. S.) 1130, to be under no obligation to demand payment within the period of the statute of limitations.

Mandamus. The right to mandamus to compel payment of a salary to a public officer alleged to have been removed from office is upheld in State *ex rel.* Hamilton *v.* Grant (Wyo.) 1 L. R. A. (N. S.) 588.

Master and servant. A barnman of a street railway company, charged with the duty of substituting a perfect car for one which has become disabled, is held, in Chicago Union T. Co. *v.* Sawusch (Ill.)1 L. R. A. (N. S.) 670, not to be a fellow servant of the conductors on the road.

Railway employees engaged in operating a steam shovel in a gravel pit are held, in Jemming *v.* Great Northern R. Co. (Minn.) 1 L. R. A. (N. S.) 696, not to be engaged in operating a railway, within the statute abrogating the fellow-servant rule.

The assignment of servants of the same master to separate departments of the same general enterprise is held, in Atchison & E. Bridge Co. *v.* Miller (Kan.) 1 L. R. A. (N. S.) 682, not to affect their relation as fellow servants, unless the departments are so far disconnected that each may be regarded as a separate undertaking.

A railroad company which purchased lantern globes of standard make from reliable manufacturers is held, in Gulf, C. & S. F. R. Co. *v.* Larkin (Tex.) 1 L. R. A. (N. S.) 944, not bound to inspect them to protect employees from injuries by their breaking while being cleaned.

An engineer of a work train is held, in Illinois C. R. Co. *v.* Stith (Ky.) 1 L. R. A. (N. S.) 1014, not to be guilty of contributory negligence, as a matter of law, in placing his engine on the main track on the time of a fast train.

Failure to warn a servant as to the danger of throwing an ice pick over a partition into a room where others are working, without giving adequate notice, is held, in Desautels *v.* Cloutier (Mass.) 1 L. R. A. (N. S.) 669, not to be negligence on the part of the master which will render him liable for personal injuries caused in consequence of failure to give such notice.

Milk. An ordinance prohibiting the sale of milk containing less than 7-10 of 1 per cent of ash is held, in St. Louis *v.* Liessing (Mo.) 1 L. R. A. (N. S.) 918, not to be unreasonable or oppressive.

Prohibiting the sale of milk containing any preservative is held, in St. Louis *v.* Schuler (Mo.) 1 L. R. A. (N. S.) 928, to be within the police power, although there may be preservatives which are not deleterious to health.

The prohibition of the sale of milk from cows fed on still slop is held, in Sanders *v.* Com. (Ky.) 1 L. R. A. (N. S.) 932, to be a proper exercise of the police power, although there is nothing to show that such milk is not a pure and wholesome article of food.

An ordinance forbidding the sale of milk containing less than 3 per cent, by weight, of butter fat, to be estimated gravimetrically by the Adams paper-coil process, is held, in St. Louis *v.* Grafeman Dairy Co. (Mo.) 1 L. R. A. (N. S.) 926, not to be void for unreasonableness, as matter of law.

Requiring milk dealers to register with the health commissioner, and pay a registration fee, is held, in St. Louis *v.* Grafeman Dairy Co. (Mo.) 1 L. R. A. (N. S.) 936, to be a valid police regulation.

Mortgage. A sale under a power in a chattel mortgage while the property was in the custody of the sheriff, under a levy made after advertisement of the mortgage sale, is held, in Fulghum *v.* J. P. Williams Co. (Ga.) 1 L. R. A. (N. S.) 1055, to be void and ineffectual.

The right of a purchaser at a foreclosure sale to the income of the property before the title becomes perfect in him is denied in Schaeppi *v.* Bartholomae (Ill.) 1 L. R. A. (N. S.) 1079, notwithstanding a stipulation in the mortgage that, in case of foreclosure, "a receiver shall be appointed to collect the income, which shall be paid to the person entitled to a deed under the certificate of sale."

Municipal corporations. The right of local self-government in Rhode Island, which has been strongly urged in view of the peculiar origin of that state, is denied, in Horton *v.* Newport (R. I.) 1 L. R. A. (N. S.) 512, as against a statute regulating the police force of the state.

The distinction between private and public functions of a municipality is considered in Dickinson *v.* Boston (Mass.) 1 L. R. A. (N. S.) 664, which denies municipal liability for negligence of the city super-

intendent of the lamp department in respect to an unsafe lamp-post.

Name. A limitation upon the right of one to use his own name in his own business is declared in Morton *v.* Morton (Cal.) 1 L. R. A. (N. S.) 660, holding that one who had established a business under a particular name, which he placed on the hats of his agents to inform customers that they were his representatives, could enjoin another of the same name, engaged in the same business, from using such name as a hat label in substantially the same way as the former, so as to deceive the public.

Negligence. A company manufacturing and bottling a beverage is held, in Watson *v.* Augusta Brewing Co. (Ga.) 1 L. R. A. (N. S.) 1178, to be liable to one injured by swallowing pieces of glass while drinking from one of such bottles, which he procured from a merchant, who had purchased the same from the manufacturer.

Partnership. An exception to the rule denying a surviving partner compensation for his services is made in Condon *v.* Callahan (Tenn.) 1 L. R. A. (N. S.) 643, holding that he is entitled to compensation for the part of the work, in completing a construction contract, which the deceased, according to the agreement between them, would have contributed had he lived.

An agreement by a partner that the goods of the firm may be paid for by the customer in commodities furnished for the partner's own benefit is held, in Eady *v.* Newton Coal & L. Co. (Ga.) 1 L. R. A. (N. S.) 650, to be void as beyond the scope of the partner's apparent authority.

Physicians and surgeons. The power of the state, in the exercise of its police power, to revoke a physician's license to practise, is sustained in Meffert *v.* Packer (Kan.) 1 L. R. A. (N. S.) 811.

Power of attorney. The common-law rule that notice to the agent is necessary to revoke a power of attorney to convey real estate is held, in Best *v.* Gunther (Wis.) 1 L. R. A. (N. S.) 577, not to be abrogated by a statute merely authorizing the recording of such power, and providing that, if recorded, the instrument of revocation must also be recorded to be valid.

Principal and agent. The authority of an agent to collect a mortgage indebtedness is held, in Friend *v.* Ward (Wis.) 1 L. R. A. (N. S.) 891, presumptively, and in the absence of anything appearing to the contrary, to continue until he obtains the money, the securities having remained in his possession.

Profert and oyer. The well-established rule that neither profert can be made, nor oyer demanded, of an instrument, is applied in Riley *v.* Yost (W. Va.) 1 L. R. A. (N. S.) 777.

Prohibition. A writ of prohibition to prevent proceedings under a statute providing for the removal of an incumbent from a public office is held, in Bell *v.* First Judicial District Court (Nev.) 1 L. R. A. (N. S.) 843, not to be prevented by the fact that the statute is unconstitutional, relief having been denied petitioner in the lower court, and their being no other plain, speedy, and adequate remedy.

Quo warranto. The district court is held, in State *ex rel.* Young *v.* Kent (Minn.) 1 L. R. A. (N. S.) 826, to have no discretion to refuse leave to the attorney general to file an information, in the nature of a quo warranto, directed to a municipal corporation, requiring it to show cause why its franchise should not be declared null and void.

Robbery. Officers who, after arresting a person, forcibly search him, and take from him valuables with the intention of keeping them, are held, in Tones *v.* State (Tex. Crim. App.) 1 L. R. A. (N. S.) 1024, to be guilty of robbery.

Salvage. The owners of a tug, whose fault caused the wreck of its tow, are held, in The Pine Forest (C. C. A. 1st C.) 1 L. R. A. (N. S.) 873, to have no right to salvage for services rendered by another vessel belonging to them, in raising and bringing the wreck into a port of refuge.

Smoke. A public official, intrusted with the custody of a government building, is held, in Palmer *v.* District of Columbia (App. D. C.) 1 L. R. A. (N. S.) 878, to be bound to obey the provisions of a statute forbidding the emission of dense smoke from chimneys.

Street railways. An ordinance requiring a certain kind of fenders on street cars, or some others, equally as good, approved by certain officials, is held invalid, in Elkhart *v.* Murray (Ind.) 1 L. R. A. (N. S.) 940, because of the arbitrary discretion given to the officials.

The laying of a street-railway track under municipal authority so near a sidewalk, at a point where the streets intersect at an acute angle, that passing cars will overhang it a few inches, is held, in Hester *v.* Dur-

ham Traction Co. (N. C.) 1 L. R. A. (N. S.) 981, to give an abutting owner no right of action, the title to the street being in the municipality.

Supersedeas. The right to supersedeas pending appeal is held, in State *ex rel.* Gibson *v.* Superior Court (Wash.) 1 L. R. A. (N. S.) 554, not to extend to an appeal from an order enjoining continued operation of a shooting gallery.

Taxes. In opposition to the rule generally accepted, it is held, in Louisville *v.* McAteer (Ky.) 1 L. R. A. (N. S.) 766, that property of a water company owned by a city is not used for a public purpose, but is taxable.

Telephones. The right of a city to require a license for the use of streets by a telephone company is denied in Wisconsin Teleph. Co. *v.* Milwaukee (Wis.) 1 L. R. A. (N. S.) 581, where the statute authorizes the company to use the streets.

Theaters. A right of action for trespass for failure to provide the seat called for by a theater ticket is denied in Horney *v.* Nixon (Pa.) 1 L. R. A. (N. S.) 1184, upon the ground that the owner of the theater is under no implied obligation to serve the public, and that the only remedy is assumpsit for breach of the contract.

A condition upon a theater ticket that it will not be honored if sold on the sidewalk is held, in Collister *v.* Hayman (N. Y.) 1 L. R. A. (N. S.) 1188, not to be against public policy.

Time. The legal fiction that there are no fractions of a day is held, in Brady *v.* Gilman (Minn.) 1 L. R. A. (N. S.) 835, to have no application to cases where the statute expressly requires that notice shall be taken of the precise time an official act is done, and a record thereof made.

Trademarks. A trademark is held, in Falk *v.* American West Indies T. Co. (N. Y.) 1 L. R. A. (N. S.) 704, not to be assignable apart from the good will of the business to which it is attached.

Trusts. The right of equity to change the number of trustees from that designated by the creator of the trust, when changed conditions render it necessary, is upheld in Barker *v.* Barker (N. H.) 1 L. R. A. (N. S.) 802.

Usury. A statute providing that no action shall be brought on a claim for usury after two years from the time the cause of action arose is held, in Slover *v.* Union Bank (Tenn.) 1 L. R. A. (N. S.) 528, not to affect rights of action which accrued prior to its passage.

Voters and elections. Failure to number ballots as required by statute is held, in Montgomery *v.* Henry (Ala.) 1 L. R. A. (N. S.) 656, not to be fatal.

Waters. The owner of an irrigation ditch is held, in Howell *v.* Big Horn Basin Colonization Co. (Wyo.) 1 L. R. A. (N. S.) 596, not exempted from liability, under the Wyoming statute, for injury to adjoining land through seepage caused by negligence in constructing and grading the bottom of the ditch, because the statute contained no specific requirements in that respect.

The title to the bed of a navigable river is held, in Kinkead *v.* Turgeon (Neb.) 1 L. R. A. (N. S.) 762, to be in the state, and the rights of the riparian owner to be bounded by the banks of the river.

Water flowing in one direction over the surface without a well-defined channel, from a swamp fed by springs, to the channel of a stream, is held, in Harrington *v.* Demaris (Or.) 1 L. R. A. (N. S.) 756, to be a water course, which cannot be diverted to the injury of a riparian owner.

The unrestrained exercise, for thirty years, of the right to cast sawdust in a stream, is held in Com. *v.* Sisson (Mass.) 1 L. R. A. (N. S.) 752, to create no prescriptive rights which will restrict the public right to regulate the use of the stream for such purpose, in order to preserve food fishes.

The power of the Federal government to grant tide lands lying between high and low water mark within a territory is sustained in Kneeland *v.* Korter (Wash.) 1 L. R. A. (N. S.) 745.

Unpaid water rates of an occupant of premises are held, in Chicago *v.* Northwestern Mut. L. Ins. Co. (Ill.) 1 L. R. A. (N. S.) 770, not to be collectible from a subsequent occupant after a lien therefor is lost. That a water company may be compelled by mandamus to supply an individual applicant with water at reasonable rates is held in Robbins *v.* Bangor R. & E. Co. (Me.) 1 L. R. A. (N. S.) 963.

Wills. That there may be a valid devise to one for life with power of disposition, which will not affect the remainder over unless the power is exercised, is held in Roberts *v.* Roberts (Md.) 1 L. R. A. (N. S.) 782.

A statute providing that foreign wills admitted to probate in other states may be allowed probate in the county in which the testator left real estate is held, in *Re* Clark (Cal.) 1 L. R. A. (N. S.) 996, not to permit the will of a resident to be probated in another state, and then brought into California for secondary or ancillary administration.

A vested remainder is held, in Ball *v.* Holland (Mass.) 1 L. R. A. (N. S.) 1005, to be created by a will giving the testator's widow authority to spend the principal and income, and providing that, at her death, all of the testator's property which she may possess shall be disposed of equally among his surviving children.

The Bancroft-Whitney Company.

The great house of the Bancroft-Whitney Company, which has long been a powerful factor in the law-book business through every part of the nation, and has held a unique, historic, and unrivaled position in that business on the Pacific coast, suffered very heavy loss by the terrible fire in San Francisco. Interest of an uncommon kind will be felt in this situation by hosts of judges and lawyers, especially throughout the West. Almost from the very beginning of business life on the Pacific coast the business carried on by this company and its predecessors has been developing until it has become one of the conspicuous institutions of that part of the United States.

The future of this house, like that of the city whose disaster it shared, will doubtless be larger than its past. The energy and ability with which it has met the situation, planned for the restoration of its impaired facilities, and begun the execution of the work arouses admiration, and makes it certain to recover rapidly from its great loss, and establish its position with increased strength.

Soney & Sage.

We have notice that Soney & Sage of Newark, N. J., are now occupying their new store building at No. 42 Clinton St. Congratulations.

New Books.

"Minnesota Revised Statutes 1905." Annotated by Mark B. Dunnell. (Published by State of Minnesota, at St. Paul.) $5.50.

Deitch's "Finch, Insurance Digest." Vol. 18. (Bobbs-Merrill Co., Indianapolis.) $3.

"The Consolidated Corporation Law." (Michigan) As amended in 1905. Annotated by Burritt Hamilton. (Sprague Publishing Co., Detroit.) Paper, 50 cts.

"Gregory's Forms, Annotated." A legal form book for Virginia and West Virginia. (W. E. Ross, Richmond, Va.) $7.50.

"The Business Corporation Laws of New York." By Richard C. Harrison. (L. C. P. Co., New York.) $3.50.

"The Insurance Law." Revised by Commissioners of Statutory Revision. Prepared by Andrew Hamilton. (Banks & Co., Albany, N. Y.) Buckram, $2. Paper, $1.50.

Williams's "Legal Ethics." (Geo. T. Bisel Co., Philadelphia, Pa.) $1.50.

"The Victorian Chancellors." A new work on the Chancellors of England. By J. B. Atlay. (Little, Brown, & Co., Boston, Mass.) 2 vols. $8.

"The Heart of the Railroad Problem." By Prof. Frank Parsons. (Little, Brown, & Co., Boston, Mass.) $1.50.

"General Statutes of Florida." (Secretary of State, Tallahassee, Fla.) $6.50.

"Benjamin on Sales." With references to the American decisions and to the French Code and Civil Law. 5th ed. By W. A. Ker and A. R. Butterworth. (Boston Book Co., Boston, Mass.) $6.50.

"Digest of the English Law Reports, 1901–1905." (Little, Brown, & Co., Boston, Mass.) Cloth, $3.50. Half calf or full law sheep, $5.

"Digest of the Massachusetts Reports." Vols. 1 to 189 inclusive. (Little, Brown, & Co., Boston.) 8 vols. $48.

Recent Articles in Law Journals and Reviews.

"Criminal Anthropology—A Review."—5 Canadian Law Review, 201.

"The Genesis of the Corporation."—5 Canadian Law Review, 218.

"The New Act Concerning Demurrers to Evidence."—11 Virginia Law Register, 959.

"Suggested Changes in Criminal Practice."—11 Virginia Law Register, 969.

"Regulation of Railway Rates."—21 Political Science Quarterly, 28.

"Ballot Laws and Their Workings."—21 Political Science Quarterly, 38.

"The Connecticut Land System."—21 Political Science Quarterly, 59.

"Municipal Home Rule."—21 Political Science Quarterly, 77.

"A Study on the Treatment of Social Offenders from a Scientific Point of View."—23 Medico-Legal Journal, 691.

"Two Theories in Regard to the Implied Powers of the Constitution."—54 American Law Register, 214.

"The Law of Bank Checks (Practical Series)."—23 Banking Law Journal, 263.

"Emancipation and Citizenship."—15 Yale Law Journal, 263.

"Can the Unauthorized Act of an Agent be Ratified by the Principal after the Third Party has Receded from the Contract?"—62 Central Law Journal, 338.

"'Strikes' as a Defense to the Performance of a Contract."—62 Central Law Journal, 317.

"The Right of Surviving Partner to Sell Real Estate Which Belonged to the Firm."—62 Central Law Journal, 319.

"Taking Samples for Analysis."—70 Justice of the Peace, 183.

"Legal Tactics Series: I. Personal Injury Actions."—1 Illinois Law Review, 16.

"Incorporation of Labor Unions."—68 Albany Law Journal, 68.

"Railway Rate Regulation."—19 Harvard Law Review, 487.

"Following Misappropriated Property into Its Product."—19 Harvard Law Review, 511.

"The Doctrine of the Federal Courts as to the Validity of Irregular Municipal Bonds."—4 Michigan Law Review, 497.

"Exchange of Stock for Capitalized Profits."— 4 Michigan Law Review, 526.

"Manx Land Tenure."—22 Law Quarterly Review, 136.

"Maritime Salvage."—22 Law Quarterly Review, 163.

"The Legal Personality of a Foreign Corporation."—22 Law Quarterly Review, 178.

"Employment of Children."—70 Justice of the Peace, 193.

"Subsidence of Highways."—70 Justice of the Peace, 194.

"Motor Car Cases."—25 Law Notes (Eng.), 149.

"The Ethics of the Practice."—14 American Law, 197.

"Why Is It so Difficult to Enforce Our Criminal Laws?"—14 American Lawyer, 205.

"The Territorial Expansion of the Common Law Ideal."—14 American Lawyer, 210.

"Criminal Law Reform."—14 American Lawyer, 217.

"The Law Relating to Trade Unions."—31 Law Magazine and Review, 272.

"The Province of the Judge and of the Jury."—31 Law Magazine and Review, 289.

"Criminal Responsibility."—31 Law Magazine and Review, 315.

"The Bearing of Custom upon the Question of What is 'Mistake of Law,' and What is 'Mistake of Fact.'"—62 Central Law Journal, 360.

"Typewriting Expert Testimony."—38 Chicago Legal News, 312.

"The Succession Tax."—10 Law Notes, 26.

"Effect of Clause Making Insurance Policy Incontestable for Fraud."—10 Law Notes, 28.

"The Medieval Innkeeper and His Responsibility."—18 Green Bag, 269.

"Arbitrary Searches and Seizures as Applied to Modern Industry."—18 Green Bag, 273.

"A Bill for a Federal License Law."—32 National Corporation Reporter, 377.

"The American Lawyers and Their Making."—14 American Lawyer, 147.

"The Disregard of Law."—14 American Lawyer, 154.

"A Plea for the Preservation of Our Forests, Streams, and Fuel (Concluded)."—14 American Lawyer, 159.

"The Corrupt Practices Act—The Nominating Machinery and the Australian Ballot System of Massachusetts."—14 American Lawyer, 163.

"Corporate Self-Incrimination."—32 National Corporation Reporter, 349.

"The Validity of State Statutes Prohibiting Contracts of Exemption by Carriers Concerning Interstate Commerce."—12 Virginia Law Register, 1.

"Appeals from Split Decisions in Patent Cases."—38 Chicago Legal News, 329.

"Character of Servants. Blacklisting."—42 Canada Law Journal, 289.

"The Corrupt Practices Act.—The Nominating Machinery and the Australian Ballot

System of Massachusetts."—68 Albany Law Journal, 102.

"The Prevalence of Perjury."—68 Albany Law Journal, 108.

"The Compensation of Medical Witnesses."—4 Michigan Law Review, 413.

"The Nature and Extent of an Agent's Authority."—4 Michigan Law Review, 433.

"The Evils of Overcapitalization."—32 National Corporation Reporter, 457.

"The Disregard of Law—Continued."—38 Chicago Legal News, 321.

"The Individualism of the Constitution."—62 Central Law Journal, 377.

"Employment of Children (con.)."—70 Justice of the Peace, 219.

The Humorous Side.

LOOKING FOR BETTER TERRITORY.—The following item is copied from the Kansas City Journal:

A Kansas City (Kan.) snitch who had been making a living for years drumming up suits against corporations, especially street railroads, struck a hard run of luck. One by one his cases came on for trial and the jury regularly brought in a verdict for the defendant.

"'I do not propose to stand this any longer,' said he.

"'What do you propose to do?' he was asked.

"'Why,' he replied, 'I am going to take my witnesses and move to St. Paul.'"

QUASI NEUTRALITY.—A certain judge was charged with partiality on one occasion, and indignantly replied: "I want you to understand, sir, that this court is neither partial nor impartial."

COULD TELL IT ANOTHER WAY.—Many years ago an old and well-to-do farmer in Western New York had something of a reputation as a litigant. He had a peculiar twist about his mouth when he talked, due to some muscular affection, which gave a striking effect to his utterances. His old neighbors tell of a trip that he made to see his lawyers on a certain occasion when he had made up his mind to have a lawsuit. He sat down with his lawyer, and laid out his case before him at length. But the lawyer said: "Well, on that statement you haven't any case." The old man hitched his trousers nervously, twitched his face, and hastily replied: "Well, I can tell it another way."

MADE THE FIRE FLY.—The same old man used to tell about the early days when the country was new and the cows would get lost in the woods. He said he used to go after them barefooted and sometimes hunt until after dark. Stubbing along, he said, his bare toes would strike the beech roots, and the fire would fly.

Which Law Governs?

A NOTE reserving 8 per cent interest is made in a state which allows only 6 per cent and is payable in a state which allows 10 per cent. Query: By the law of which state is the question as to usury to be determined?

A SALE of goods is made in a state where delivery is not necessary to protect the purchaser against the creditors of the seller but the goods at the time of the sale are in a state by the law of which delivery is necessary for such purpose.
Query: Which law governs?

A TESTATOR domiciled in one state devises real property in another to his "heirs at law." Query: By the laws of which state are the heirs to be ascertained?

The foregoing examples which might be almost indefinitely extended are illustrations of a class of questions that are arising with increasing frequency in the courts of this country.

These and all other concrete questions that have been passed upon by the courts involving conflict of laws are thoroughly discussed in **Wharton's Conflict of Laws, Third Edition (1905) by George H. Parmele.**

This work presents all the American and English decisions upon concrete questions involving conflict of laws, thus supplying concrete rules for concrete questions and obviating, so far as the development of the case law permits, the necessity of deducting rules from broad abstract principles or from rules applied to analogous questions.

It formulates, from the decisions in adjudicated cases, in connection with discussions in the opinions, the general principles governing the choice between conflicting laws of different states or countries.

It clears up so far as possible the confusion into which the subject has been thrown by the conflicting statements of general principles by the courts and text writers. In a great many instances it has been possible by careful study to harmonize apparently conflicting decisions and to reduce the case law on the subject to an orderly system.

2 Volumes $12.00 net delivered
Send for Table of Contents : : : :

The Lawyers Co-operative Publishing Co.

ROCHESTER, N. Y.

225 Dearborn Street
Chicago

German American Bank Building
St. Paul

81 Nassau Street
New York

C649

edju-
Re-
time
nake.
ve to
ve it

rs to
f it.
have
be-

and
the
ding
e in
se is

Six
o a
nore

tity,
can

nter
ime
our

ing.

O.

ccs

dg.